

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION – CINCINNATI**

MYRA HOFSTETTER,)
)
 Plaintiff,)
)
 vs.) **Civil Action No. 1:11-cv-614**
)
 CAPIO PARTNERS, LLC,)
)
 Defendant.)
)

**DEFENDANT, CAPIO PARTNERS, LLC'S,
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, Capio Partners, LLC (Capio), through counsel and pursuant to the Federal Rules of Civil Procedure, submits this Answer and Affirmative Defenses to the Complaint filed by Plaintiff, Myra Hofstetter (Plaintiff), and states:

INTRODUCTION

1. Capió admits Plaintiff purports to bring this action pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, but denies any and all liability, wrongdoing, or damages under the law. Except as specifically admitted, Capió denies the allegations in ¶ 1.

JURISDICTION AND VENUE

2. Capiro admits the allegations in ¶ 2 for jurisdictional purposes only.
3. Capiro admits the allegations in ¶ 3 for jurisdictional purposes only.
4. Capiro admits the allegations in ¶ 4 for venue purposes only.

PARTIES

5. Upon information and belief, Capio admits the allegations in ¶ 5.

6. Capiro denies the allegations in ¶ 6 as calling for a legal conclusion.

7. Capiro denies the allegations in ¶ 7 as calling for a legal conclusion.

8. Capiro admits part of its business is the collection of debts and that it maintains an office in Deluth, Georgia. Except as specifically admitted, Capiro denies the allegations in ¶ 8.

9. Capiro denies the allegations in ¶ 9 for lack of knowledge or information sufficient to form a belief therein.

FACTUAL ALLEGATIONS

10. Capiro admits that an account in Plaintiff's name was placed with it for collection. Capiro further admits its records show it placed a telephone call to Plaintiff. Except as specifically admitted, Capiro denies the allegations in ¶ 10.

11. Capiro denies the allegations in ¶ 11 for lack of knowledge or information sufficient to form a belief therein.

12. Capiro denies the allegations in ¶ 12.

13. Capiro denies the allegations in ¶ 13.

14. Capiro denies the allegations in ¶ 14.

15. Capiro denies the allegations in ¶ 15.

16. Capiro denies the allegations in ¶ 16.

17. Capiro admits its records show it placed a telephone call to Plaintiff. Except as specifically admitted, Capiro denies the allegations in ¶ 17.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

18. Capio denies the allegations in ¶ 18, including subparagraphs (a) – (c).
19. Capio denies Plaintiff is entitled to the relief requested in ¶ 19.
20. Capio denies Plaintiff is entitled to the relief requested in ¶ 20.
21. Capio denies Plaintiff is entitled to the relief requested in ¶ 21.

AFFIRMATIVE DEFENSES

1. Plaintiff has not stated a claim upon which relief may be granted.
2. To the extent any violations are established, any such violations were not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.
3. Capio denies any liability; however, regardless of liability, Plaintiff has suffered no actual damages as a result of Capio's purported violations.
4. One or more claims asserted by Plaintiff are barred by the statute of limitations, laches, estoppel, waiver and/or unclean hands.
5. Assuming Plaintiff suffered any damages, she has failed to mitigate his damages or take other reasonable steps to avoid or reduce her damages.
6. Any harm suffered by Plaintiff was legally and proximately caused by persons or entities other than Capio that were beyond the control or supervision of Capio or for whom Capio was and is not responsible or liable.

WHEREFORE, Defendant, Capio Partners, LLC, requests the Court dismiss this action with prejudice and grant it any other relief that the Court deems appropriate.

Respectfully submitted,

/s/ Franklin C. Malemud, Esq.
Franklin C. Malemud, Esq.
Ohio Attorney Reg. #0068356
Reminger Co., L.P.A.
1400 Midland Building
101 West Prospect Avenue
Cleveland, OH 44115-1093
Telephone: (216) 430-2225
Facsimile: (216) 430-2284
Email: fmalemud@reminger.com

Attorney for Defendant,
Capio Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by the Court's ECF/CM electronic filing system on this 20th day of October, 2011.

/s/ Franklin C. Malemud
Franklin C. Malemud, Esq.